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REVIEW OF THE IMPLEMENTATION OF THE
DECLARATION ON THE STRENGTHENING
OF INTERNATIONAL SECURITY

SECURITY COUNCIL
Fifty-first year

Letter dated 28 October 1996 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit, enclosed herewith, the aide-mémoire of the Government of the Federal Republic of Yugoslavia concerning the Prevlaka issue.

I should be grateful if you would have the text of the present letter and its annex circulated as an official document of the General Assembly, under agenda item 81, and of the Security Council.

(Signed) Vladislav JOVANOVIC
Chargé d'affaires, a.i.

* Reissued for technical reasons.

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ANNEX

Aide-mémoire issued at Belgrade in October 1996 by the Government of the Federal Republic of Yugoslavia concerning the Prevlaka issue

1. Between the Federal Republic of Yugoslavia, namely between the Republic of Montenegro and the Republic of Croatia, there is a territorial dispute over the Prevlaka peninsula (Cape Ostri and a part of its natural hinterland) in the Boka Kotorska bay. This has been clearly noted in the first sentence of article 4 of the Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia of 23 August 1996 (A/51/351-S/1996/744, annex). This fact makes it evident that the recognition of the Republic of Croatia by the Federal Republic of Yugoslavia does not and cannot imply the recognition of the disputed territory of Prevlaka. On the other hand, in accordance with international law, it suffices that only one party involved should consider that a dispute exists, as was unambiguously pointed out by the International Court of Justice in its advisory opinion concerning the interpretation of peace treaties of 1950. According to international law the fact that the other party denies the existence of the dispute does not prove in itself its non-existence.

2. Considering the fact that no delimitation on land and at sea has been effected between the Republic of Montenegro and the Republic of Croatia, applying the legal regulations of the former Yugoslavia and taking account of the aspiration of the Republic of Croatia to continue its existence as an independent State, the Republic of Montenegro, on the basis of a decision adopted by its Parliament on 8 October 1991 (i.e. before the secession of Croatia), approached the Parliament of the Republic of Croatia with an initiative for delimitation with the Republic of Croatia by mutual agreement. By taking this action the Republic of Montenegro made the existence of this dispute both public and official. The Parliament of the Republic of Croatia accepted the initiative. This marked the moment when the Republic of Croatia undertook to effect a delimitation with the Federal Republic of Yugoslavia, i.e. with the Republic of Montenegro in the region of Prevlaka.

Explanation of the dispute

3. The Republic of Croatia claims the territory of Prevlaka on the basis of a historical right. This historical right, however, is actually a political argument.

4. The Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, claims the territory of Prevlaka on the grounds of effective exercise of jurisdiction in this region during a long period of history, namely on the basis of its administration and control over the area, always accomplished in the name of sovereignty. In the past, as well as in more recent times - and not only over Prevlaka (Cape Ostri and a part of its natural hinterland), but over the whole region up to the point of and including Molunat - this administration was carried out from the centres in Boka Kotorska, i.e. in Montenegro.

5. Accordingly, as the Permanent Court of International Justice defined dispute, in the Mavrommatis case in 1924, there is between the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, and the Republic of Croatia a "disagreement on a point of law or fact". There is a controversy in the claims made by the two parties, the solution of which always implies legal and other consequences.

Acknowledgement of the dispute by the Republic of Croatia

6. In the procedure of international recognition for the Republic of Croatia, in his letter of 19 December 1991, addressed to the President of the Council of Ministers of the European Community, the President of the Republic of Croatia made a request that the Republic of Croatia be recognized by the States members of the European Community (EC). The Arbitration Commission examined this request by applying the provisions of the Declaration on Yugoslavia and the Guidelines for the recognition of new States in Eastern Europe and the Soviet Union, which the EC Council of Ministers had adopted on 16 December 1991 and which the Republic of Croatia had accepted.

7. With reference to the Guidelines for the recognition of new States in Eastern Europe and the Soviet Union, the European Community made a statement on 31 December 1991 to the effect that "the recognition does not imply acceptance by the EC and its member States of the position of any republic as regards territory which is under dispute by two or more republics". Consequently, at the time of granting international recognition to the Republic of Croatia, the States members of the European Union did not recognize the disputed territory, in this case the territory of Prevlaka, i.e. Cape Ostri and a part of its natural hinterland, as an integral part of the Republic of Croatia. Such a statement is in full compliance with the idea that recognition should not be granted in respect of any territory over which there is a controversy. This is also in full compliance with international law and the practice according to which the recognition of a State does not necessarily imply that prior to the act of recognition all its borders have to be precisely defined. In the procedure of the admission of the Republic of Croatia to the United Nations in a letter of 11 February 1992 addressed to the Secretary-General of the United Nations by the President of the Republic of Croatia, the Republic of Croatia reaffirmed its adherence to the Guidelines for the recognition of new States in Eastern Europe and in the Soviet Union. Consequently, the Republic of Croatia has already accepted - as a condition of its international existence - that a disputed part of territory cannot be considered as an integral part of the Republic of Croatia.

8. The Guidelines for the recognition of new States in Eastern Europe and in the Soviet Union, which reflect the general European position, and the statement of the European Community that recognition cannot include something which is the subject of a dispute, are in full harmony with the international legal nature of a dispute, which, by definition, represents a controversy in claims made by two parties with respect to a specific part of territory, whose solution results in legal and other consequences. In addition, one of the basic principles of international law is that delimitation between States is never a unilateral, but always a bilateral legal act of international importance and that States are obliged to proceed with delimitation in such a manner.

The United Nations security regime on Prevlaka

9. The present legal status of the Prevlaka peninsula has been regulated by the joint declarations having the character of a treaty made by the President of the Federal Republic of Yugoslavia and the President of the Republic of Croatia on 30 September and 20 October 1992, which comprise the so-called Agreement on Prevlaka, drafted by the United Nations and accepted by the Federal Republic of Yugoslavia and the Republic of Croatia; the document of the handover of the barracks on Prevlaka to the United Nations observer mission of 20 October 1992; Security Council resolution 779 (1992) of 6 October 1992; resolution 981 (1995) of 31 March 1995; resolution 1038 (1996) of 15 January 1996; and resolution 1066 (1996) of 15 July 1996. The Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia, article 4, contains a stipulation that, pending the resolution of the territorial dispute over Prevlaka, the two parties are agreed to respect the existing security regime of the United Nations, with the United Nations monitoring.

10. The Joint Declaration of 30 September 1992 addressed the outstanding issues related to the belt between the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, and the Republic of Croatia. The agreement established a provisional legal status for the territory of Prevlaka, which has been demilitarized together with its hinterland. It was agreed that the issue of the overall security of Boka Kotorska and of the Dubrovnik region should be resolved through further negotiations. The agreement was confirmed by Security Council resolution 779 (1992) whereby the United Nations undertook the responsibility to monitor the arrangements agreed upon, i.e. to ensure that the established legal regime of United Nations security be respected until a peaceful solution would be achieved by the two parties. United Nations military observers have been deployed on the peninsula and thereby the authority and control of the world Organization was established. By establishing the United Nations security regime in this area, the Security Council has practically excluded the disputed issue from the jurisdiction and the sole responsibility of the two interested States, thus indicating that this issue could be a threat to peace and security. At the same time, the Security Council imposed upon the interested parties the obligation to work out a solution in a peaceful manner. In fact, the Security Council has established the authority and control of the world Organization on Prevlaka, so that neither Yugoslav nor Croatian jurisdiction applies to Prevlaka today. By adopting the above resolution, the Security Council called upon the parties to settle the dispute through mutual negotiations.

11. The Declaration signed by the President of the Federal Republic of Yugoslavia and the President of the Republic of Croatia on 20 October 1992 reaffirmed the so-called Agreement on Prevlaka, reached in the meantime. That agreement, which was drafted by United Nations representatives and accepted by both parties, defined precisely the demilitarized status and the regime in the area of Prevlaka and its hinterland. "Boundaries for the United Nations demilitarized zone under resolution 779 (1992) were agreed on the night of 20 October 1992 by Presidents Cosić and Tudjman, meeting under the co-chairmanship of Mr. Vance and Lord Owen", which was confirmed by the report of the United Nations Secretary-General of 24 November 1992 (S/24848), which is

also evident from the official map of the United Nations used by the United Nations military observers on Prevlaka.

12. Under the established regime of the "Blue Zone", which covers an area the coordinates of which have been defined by the United Nations Protection Force (UNPROFOR), the sole presence allowed in the "Blue Zone", which is otherwise uninhabited, is that of United Nations observers. This means that presence of any other persons, either from the territory of the Federal Republic of Yugoslavia or from the territory of the Republic of Croatia, is prohibited. In the "Yellow Zone", which covers the area marked on the map that the representatives of the Yugoslav Army agreed upon with General Morillon on 15 October 1992, no presence of military personnel or heavy weapons (artillery, tanks, mortars, anti-aircraft guns, rocket launchers and armoured personnel carriers, including all military personnel) is permitted, either on the territory of the Federal Republic of Yugoslavia i.e. the Republic of Montenegro, or on the territory of the Republic of Croatia. On the Croatian territory in the "Yellow Zone", the presence of the police of the Republic of Croatia is allowed and on the Yugoslav part of the "Yellow Zone" the presence of the police of the Republic of Montenegro is allowed, both armed with pistols only.

13. In Security Council resolution 981 (1995) of 31 March 1995, by which the mandate of UNPROFOR was replaced by that of the United Nations Confidence Restoration Operation (UNCRO), Security Council resolution 779 (1992) was once again reaffirmed. It states that the Security Council decides that the mandate of UNCRO shall include "monitoring the demilitarization of the Prevlaka peninsula in accordance with resolution 779 (1992)" pending the final settlement of the dispute.

14. In its resolution 1038 (1996) of 15 January 1996 the Security Council, in fact, once again confirmed the existence of a dispute between the two parties and, acting under Chapter VII of the Charter of the United Nations, emphasized that the obligation of both parties was to work out a solution through negotiations. The latest Security Council resolution, 1066 (1996) of 15 July 1996, takes an identical position on Prevlaka.

15. The Government of the Federal Republic of Yugoslavia and the Government of the Republic of Montenegro are satisfied with and supportive of the established United Nations security regime on Prevlaka and the present legal status of disputed territory, with the understanding that this status implies that the disputed territory will remain under the authority and control of the United Nations until the two parties settle their territorial dispute. The cooperation between the responsible authorities of the Federal Republic of Yugoslavia and the Republic of Montenegro and the United Nations military observers on Prevlaka has been a constructive one.

Violation of the United Nations security regime by the Republic of Croatia

16. Despite the established United Nations security regime, the Republic of Croatia has caused a number of incidents and has taken numerous actions seriously violating the United Nations security regime; witness the written protests submitted by the Government of the Federal Republic of Yugoslavia and the Government of Montenegro and the report of the Secretary-General submitted

to the Security Council on 22 March 1995 (S/1995/222 and Corr.1-2). At the same time, the Croatian side has unilaterally established its border on land and at sea with the Federal Republic of Yugoslavia, i.e. with the Republic of Montenegro, thereby violating a fundamental international rule of delimitation as a bilateral legal matter of international importance, as well as all the relevant Security Council resolutions and bilateral agreements. The Governments of the Federal Republic of Yugoslavia and of Montenegro cannot recognize such a sea border established in an unlawful and unilateral manner. The border between the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro and the Republic of Croatia at sea can only be drawn after the dispute over Prevlaka is resolved and after the delimitation on land in the region is carried out.

17. With respect to the unlawful behaviour of the Croatian side and the violations of the established United Nations security regime, the Government of the Federal Republic of Yugoslavia and the Government of the Republic of Montenegro have kept lodging protests with the Croatian side and have regularly reported such incidents to the United Nations representatives on the ground, as well as to the Special Representative of the Secretary-General, to the Secretary-General and to the Security Council.

18. As a result of such unlawful actions, the Republic of Croatia has, in violation of the United Nations security regime, built the following military installations: the facility at the intersection of roads Kobila Peak - Prevlaka and Cipavica cove - Vitaljina; the facility designed for the control of the Cipavica cove and the communication link Kobila - Vitaljina and Kobila - Prevlaka; the facility on the road that leads to the communication link Vitaljina - Cipavica cove in the direction of the facilities Glavica, Veilaz and Kupice; the facility on Glavica - t.p. 207; in the Bacvica Cove; on the point of a former garbage disposal site which is located on the newly built communication link Molunat - Prevlaka, from the southern side t.p. 323; on t.p. 323 Kupica; and finally, the facility on the point Veilaz. The Government of the Federal Republic of Yugoslavia and the Government of the Republic of Montenegro are lodging once again a protest against these violations and request the Security Council to urge the Republic of Croatia to annul all the results of its unlawful actions in the "Blue Zone", i.e. in the disputed region which is subject to the security regime and the authority and control of the United Nations.

Efforts of the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, to settle the dispute

19. The Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, has been making maximum efforts in order to resolve the territorial dispute with the Republic of Croatia over Prevlaka through direct diplomatic negotiations, in compliance with the instructions contained in the relevant Security Council resolutions. In that context, reference may be made to the above-mentioned initiative by the Parliament of the Republic of Montenegro, on 8 October 1991, which contained a proposal to negotiate a delimitation with the Republic of Croatia on land and at sea in the region of Prevlaka. Further reference is made to the negotiations held at The Hague and Brussels at the highest level throughout 1991 and 1992, to the meeting and talks of the Ministers of the Interior of the Republic of Montenegro and the Republic of Croatia of 20 October 1992 and 28 January 1993, to direct talks of the two interested

parties held within the framework of the Joint Inter-State Commission in the presence of the Special Representative of the Secretary-General of the United Nations on 25 April 1995, to the shuttle diplomacy of the United Nations representatives, and, finally, to the continuation of the negotiations in Dayton in November 1995, the London Conference on 9 December 1995, and the Paris Conference on 14 December 1995, the negotiations in Zagreb held on 11 March 1996 and in Belgrade on 13 May 1996. None of these, however, have yielded any result.

20. Throughout the Dayton peace negotiations in November 1995, the delegation of the Federal Republic of Yugoslavia, making use of the instruments of the overall peace arrangement, did all within its power to reach a negotiated settlement of the dispute in direct contacts with the delegation of the Republic of Croatia, in the presence of the representatives of the United States of America. The guarantees given on that occasion by the Republic of Croatia with respect to a tripartite exchange of territories between the Federal Republic of Yugoslavia, the Republic of Croatia and Bosnia and Herzegovina, and the resolution of the dispute over Prevlaka in favour of the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, are well known to all the participants of the direct peace talks in Dayton. The Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, is in possession of a paper, in the Croatian language, in which the Croatian delegation, as its version of a tripartite exchange of territories, submitted its proposal for the resolution of the dispute. The text of that paper was acceptable for the Yugoslav delegation. Once the Dayton Agreement was reached, however, through a series of public statements made by the highest-ranking officials of the Republic of Croatia, as well as statements made in direct bilateral contacts, Croatia disregarded arrangements already agreed upon, invoking an obstacle allegedly contained in article 8 of its Constitution, which in fact does not exist.

21. In all the above-mentioned contacts, the Republic of Croatia did not demonstrate readiness to start meaningful talks, thereby acting in full contravention of international law and relevant Security Council resolutions. The method used by the Republic of Croatia has been either to state that the problem was negligible and easily solvable, while continuously offering the prospect of a positive solution for the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, or to push for revision of the solutions already agreed on in bilateral agreements at the highest level or contained in Security Council resolutions; or to disregard the obligations undertaken. Thus, by evading the obligation under international law to reach a settlement and by making use of the fact that the United Nations forces on Prevlaka have a limited term of office that is periodically extended, the Republic of Croatia has been trying to put strong pressure on the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, to abandon its basic position in the territorial dispute over Prevlaka. By its actions, the Republic of Croatia has deliberately violated the Security Council resolutions 779 (1992), 981 (1995) and 1038 (1996) which, pursuant to Article 33 of the Charter of the United Nations impose the obligation to settle disputes on the basis of meaningful negotiations and in the spirit of good faith.

Agreement on Normalization of Relations and the territorial dispute over Prevlaka

22. Bearing all this in mind, the Government of the Federal Republic of Yugoslavia, whose position with respect to Prevlaka primarily reflects the position of the Republic of Montenegro, since it involves the territory of that Republic, fully aware of the broader significance of normalization of Yugoslav-Croatian relations and not seeking to impede the process of normalization, continued to offer ideas and initiatives towards a peaceful solution. In this regard, fulfilling the obligations set forth in Security Council resolution 1066 (1996) of 15 July 1996, the Federal Republic of Yugoslavia, as a minimum solution to accommodate the interests of the Federal Republic of Yugoslavia in relation to the disputed territory of Prevlaka and to allow for an agreement on the normalization of relations between the Federal Republic of Yugoslavia and the Republic of Croatia, has proposed article 4 of the Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia, which reads as follows:

> "1. The Contracting Parties are agreed to solve the disputed issue of Prevlaka through mutual negotiations. Thereby, a contribution shall be made to the full security of the part of the territory of the Federal Republic of Yugoslavia in the area of Boka Kotorska bay and the part of the territory of the Republic of Croatia in the area of the Dubrovnik region. The Contracting Parties shall settle this important disputed issue through mutual negotiations in the spirit of the Charter of the United Nations and good-neighbourliness.
>
> "2. Until mutual agreement on Prevlaka is reached, the Contracting Parties are agreed to respect the existing security regime established through United Nations monitoring."

23. The Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia represents a new challenge and a new possibility to have the territorial dispute over Prevlaka resolved by negotiations between the two parties. The first sentence of article 4 of the Agreement clearly states that there is a "disputed issue of Prevlaka" between the Federal Republic of Yugoslavia and the Republic of Croatia, Prevlaka being made up of the territory of Cape Ostri and a part of its natural hinterland. Therefore, there is a territorial dispute between the two countries.

24. In accordance with the territorial dispute over Prevlaka, the second sentence of article 4 ("Thereby a contribution shall be made to the full security of the part of the territory of the Federal Republic of Yugoslavia in the area of Boka Kotorska bay and the part of the territory of the Republic of Croatia in the area of the Dubrovnik region.") can only be interpreted as a contribution to the full security of the part of the territory of the Federal Republic of Yugoslavia in the area of Boka Kotorska bay, which is for the time being under the security regime of the United Nations, i.e. under the authority and control of the United Nations in the so-called "Blue Zone", which includes waters of the Boka Kotorska bay, which have always enjoyed the status of indivisible internal waters; the words "the part of the territory of the Republic of Croatia in the area of the Dubrovnik region" can only refer to the

territory of the Republic of Croatia bordering on the natural hinterland of Cape Ostri, i.e. Prevlaka.

25. Article 2 of the Agreement, which refers to mutual recognition of sovereignty and integrity in accordance with international law, implies that the disputed territory cannot be the object of violations by any of the parties involved. In addition, article 2 provides for an explicit obligation that delimitation be carried out on the basis of negotiations between the two parties.

26. Article 10 of the Agreement refers to the obligation of the parties to continue negotiations on the normalization of relations in the sphere of air and road traffic on the basis of the principle of reciprocity, which implies that the negotiations on the so-called south corridors, located in the disputed region, are pending, as well as the negotiations on the opening of a border crossing between the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, and the Republic of Croatia, which does not exist at present.

Proposed solution to the dispute over Prevlaka

27. Accordingly, article 4, 2 and 10 of the Agreement on Normalization of Relations offer a possibility to accommodate the interests of both parties on the basis of the principle of reciprocity set forth in article 10 by effecting a legal and just delimitation on Prevlaka, so that Cape Ostri and a part of its natural hinterland are recognized as an integral part of Boka Kotorska, i.e. of the Republic of Montenegro and the Federal Republic of Yugoslavia, since Prevlaka and a much wider region up to and including the point of Molunat have been administered over a long period of history from the larger towns in Boka Kotorska, i.e. from Montenegro. Therefore, the Federal Republic of Yugoslavia, i.e. the Republic of Montenegro, claims Prevlaka on the basis of effective continued exercise of jurisdiction, which is just another term for the sovereign possession of the disputed area according to international law.

28. At the same time, the Government of the Federal Republic of Yugoslavia and the Government of the Republic of Montenegro will, on the basis of the reciprocity of interests set forth in article 10 of the Agreement, make it possible for the Republic of Croatia to use freely the southern air and road corridor. This proposal represents a new initiative taken by the Government of the Federal Republic of Yugoslavia and the Government of the Republic of Montenegro in favour of the Republic of Croatia to settle the territorial dispute over Prevlaka and an actual measure of implementation of the Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia.